

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of Frank J. Card, Deceased.

DONALD CARD,

Plaintiff-Appellant,

v

DENNIS F. CARD,

Defendant-Appellee.

UNPUBLISHED

October 30, 2001

No. 224309

Ingham Probate Court

LC No. 99-001138-TI

Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Plaintiff appeals as of right the probate court's order dismissing his petition to determine whether a trust had been revoked. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Frank J. Card and Cora M. Card, husband and wife, established a revocable living trust and appointed themselves trustees. The trust provided, inter alia, that upon the death of Frank J. Card, title to the family farm was to be conveyed to defendant, their son. Section 2.3 of the trust provided that either trustee could act alone to exercise all rights under the trust if the other trustee was deceased or legally incapacitated.

Cora M. Card executed a document stating that Frank J. Card was legally incapacitated and purporting to revoke the trust. Cora M. Card filed a petition for a protective order for Frank J. Card; however, both Cora M. Card and Frank J. Card died before the probate court could rule on the petition. Ultimately, the court dismissed the petition.

Plaintiff, independent personal representative of the Estate of Cora M. Card and the son of Cora M. Card and Frank J. Card, filed a petition to determine whether the trust had been revoked. The probate court dismissed the petition, finding that the use of the term "legally incapacitated" in section 2.3 of the trust indicated that a judicial finding of legal incapacity was required before the other trustee could act alone and revoke the trust. The court noted that section 4.1 of the trust required a physician's certification that the other trustee lacked mental acuity before a successor trustee could act alone, and reasoned that if such a test was needed to

trigger the right of a successor trustee to act alone, a judicial determination of legal incapacity was needed to allow a trustee to revoke the trust.

We review a decision of the probate court under the clearly erroneous standard. *In re Green Charitable Trust*, 172 Mich App 298, 311; 431 NW2d 492 (1988).

At all relevant times, MCL 700.8(2)¹ provided:

‘Legally incapacitated person’, as used in sections 3 to 12 and in article 4, means a person, other than a minor, who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication, or other cause, to the extent that the person lacks sufficient understanding or capacity to make or communicate informed decisions concerning his or her person. Except as used in sections 3 to 12 and in article 4, ‘legally incapacitated person’ means a person, other than a minor, who is a legally incapacitated person as defined for purposes of article 4 or who is a protected person.

Plaintiff argues that the probate court erred in finding that the trust required a judicial finding of legal incapacity before a trustee could act alone to revoke the trust. We disagree and affirm. The term “legally incapacitated person” has a specific statutory meaning. The appointment of a guardian for a legally incapacitated person requires a judicial finding that the person is in fact incapacitated. MCL 700.443 (MCL 700.5303; MCL 700.5304). Plaintiff cites no authority that authorizes a layperson to make an independent, unfettered determination that another person is legally incapacitated. If a document uses a term to which a specific meaning has been ascribed by statute or decision, that meaning must be accepted and applied to the term. *In re Butterfield Estate*, 405 Mich 702, 714-715; 275 NW2d 262 (1979). The language of section 2.3 of the trust is unambiguous; therefore, the intent must be gleaned from the four corners of the instrument itself. *In re Woodworth Trust*, 196 Mich App 326, 327; 492 NW2d 818 (1992). The probate court reasoned that use of a term to which a specific meaning was described necessitated a conclusion that a judicial finding of legal incapacity was needed in order to allow an original trustee to act alone to revoke the trust. Moreover, the court reasoned that because allowing a successor trustee to act alone is a less drastic step than is revocation of the trust, yet requires a physician’s certification, a judicial finding of legal incapacity is necessary to allow an original trustee to revoke the trust. The probate court correctly concluded that use of the term “legally incapacitated” in section 2.3 of the trust necessitated a judicial finding that an original trustee was legally incapacitated prior to revocation of the trust by the other original trustee. The probate court properly dismissed plaintiff’s petition. *Green, supra*.

¹ 1998 PA 386, effective April 1, 2000, repealed the Probate Code and enacted the Estates and Protected Individuals Code. The briefs of the parties cite to provisions of the Probate Code in effect at the time this case was decided in the probate court. Where available, citations to the new provisions in the Estates and Protected Individuals Code are supplied in parentheses. E.g., MCL 700.8(2) (MCL 700.1105; MCL 700.1106).

Affirmed.

/s/ William C. Whitbeck

/s/ Janet T. Neff

/s/ Joel P. Hoekstra